

DISCUSSING YOUR ESTATE PLAN: THE OTHER PART OF THE PROCESS

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Many individuals resist planning (creating a Will or Trust) for the eventual disposal of their financial assets (home, stocks, bonds, etc.) upon their death. Individuals that fail to plan will have their assets administered pursuant to state statutes and under court supervision. Those individuals that do not desire to have others making personal decisions for them, both during life and after death, must plan for these events. This article is meant to address issues that those who do plan must consider with the preparation of their estate planning documents. Thorough planning can insure that children or family members are aware of your preferences and avoid a potential legal battle.

Financial Issues

Financial Records:

Regardless of whether your assets are owned in your individual name, jointly with another, or a Trust it is important to create a detailed record (checkbook registry, bank and investment statements and tax returns) of each account, their location and how you want them distributed upon death. Alternatively, your beneficiaries may be required to track down your assets through a state's comptroller's office or the office for unclaimed property.

Gift & Estate Taxes:

The disposition of financial assets (annual or lump sum gifts, deeding property to children, etc.) accomplishes several objectives: (i) removes the asset from your estate at death; (ii) shields the property from a future Medicaid lien; and (iii) starts the three-year look-back period (estate and Medicaid planning). When making the disposition the transferor must also consider whether they will need the assets at a later date to cover future financial and medical expenses. The loss of a step-up in basis at death, control over the asset during your lifetime and other factors must be considered when making the disposition.

Personal Residence

Many individuals are advised that deeding or jointly titling their home with children or family members will avoid probate and make life easier for them in the future. The potential benefits (avoidance of probate) may be outweighed by the negatives (loss of total control over the property, gift and income tax consequences, loss of homestead status, creditor protection, step-up in basis upon death, and avoidable capital gains taxes upon its sale). All of these factors need to be considered and discussed before any action is taken.

Long Term Care (Home - Assisted Living – Nursing Home Care):

Planning for your care in the later years of life is something that no one can afford to put off until the last minute. Some individuals purchase long-term care insurance to cover the future costs of their care (private home care, Nursing Home, Assisted Living Facility, Adult Day Care, Senior Health Services, etc.), others plan savings to cover the anticipated costs, while the balance do not plan at all and count on their families or the government (Medicaid or Veteran benefits) to care for them.

Home Equity Line or Reverse Mortgage:

Many elderly family members, although in need of daily assistance, are adamant about living the remainder of their lives in their personal residence. If the residence is owned free-and-clear of any debt it can provide their family with several options to address the financial costs and expenses of the care. One option, the use of a home equity credit line, can provide them with a lump sum of income but require monthly payments on the debt and limit the full benefits of the loan. Another option, a reverse mortgage will require no monthly payments and provide the assurance that the homeowner can not outlive their equity. The accrued principal and interest will only come due when both parents sell the residence or they both die. Both options are viable depending upon the needs of the property owner.

Health Care Decisions

It is not practical to believe that family and friends will know your end of life decisions, the names of your doctors, health care providers and daily medications. For this reason alone, the creation of a list is important to insure that the information is readily available in the case of an emergency. The documents (health care surrogate, living will, pre-need guardian, etc.) should: (i) state your health care desires (refusing or accepting “life-sustaining treatment” such as available medical machinery and techniques, heart-lung machines, ventilators, and other medical equipment and techniques that will sustain and possibly extend your life but not cure your condition) with specificity; (ii) name the individual appointed to speak for you when you are incapacitated; (iii) list the names and contact numbers of doctors and individuals (family members, etc.) that should be notified in the case of an emergency; and (iv) grant your surrogate access to your medical records, ability to make decisions about organ donation, authorize an autopsy, and disposal of your remains upon death.

It is equally important to discuss your preferences with the individuals you want making your health care decisions when you are unable to speak for yourself. If the proposed individual is not comfortable being entrusted to make that decision another individual should be selected. In addition, it is important to update the documents when changes in the law occur or nominated individuals are no longer able to serve on your behalf.

After Death Decisions

Organ and Tissue Donation:

Many states allow you to include your preference for organ or tissue donation in your health care directives or on your driver's license. Your objectives may not be accomplished unless your health care proxy, family, and your physician are aware of your written instructions to become a donor.

Final Arrangements:

Funeral or cremation arrangements should be made well in advance of death. Once completed it is important to make children and family members aware of the arrangements, especially in second marriage situations. The arrangements should include the following: (i) type of funeral proceeding (large or just family); (ii) with or without military honors; and (iii) burial location (Arlington National cemetery, plot or spreading of ashes).

Communication is the Key

It is essential to both communicate and put into writing (living will and health care surrogate form) your end of life wishes to insure they are complied with. Having a written instrument is important, however, communication of your preference is equally as important. Your preferences should be discussed with not only your health care surrogate, but your physician and family. The more communication you have, through a written statement or discussion, with children or family the less chance there will be for a misunderstanding of your desires.

"Though no one can go back and make a brand new start, anyone can start from now and make a brand new ending."

—Anonymous